THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24325 OF 2005

ORAL ORDER:

The petitioner was awarded vehicle parking contract at Warangal Railway Station, which is valid up to 31.12.2006. It is not in dispute that as per the agreed terms and conditions, the petitioner was required to pay half of the yearly licence fee in advance, which comes to Rs.5,58,000/- for the period from 1.7.2005 to 31.12.2005. The 2nd respondent by letter dated 25.10.2005, informed the petitioner that he had remitted only a sum of Rs.5.00 lakhs, as against Rs.5,58,000/- and, accordingly, called upon the petitioner to pay the difference of Rs.58,000/- with interest at 18% p.a., at the earliest. However, on 27.10.2005 itself the respondents terminated the contract of the petitioner observing that in spite of giving several warnings, the petitioner failed to comply with the conditions of the contract, and did not pay the balance of the second instalment fee of Rs.58,000/-. The petitioner was also called upon to pay the said amount together with penal charges of Rs.11,828/-. The petitioner gave a reply stating that as a matter of fact, the entire amount of Rs.5,58,000/- was paid in three instalments on 30.6.2005, 2.8.2005 and 15.8.2005. In his representations dated 2.11.2005 and 11.11.2005, the petitioner has also furnished all the details of payments made by him, and requested to allow him to continue till 31.12.2006. In spite of the same, it is alleged, that the respondents were interfering with his business. Hence, this writ petition seeking a mandamus that the action of the respondents is arbitrary and illegal.

This Court while directing *rule nisi*, granted interim order suspending the order of termination. Now, in the counter-affidavit filed on behalf of the respondents, it is stated that it has come to the notice of the respondents that the petitioner was collecting higher charges than prescribed, contrary to the terms and conditions of the agreement. Several complaints have been received against the petitioner and a news item was published in the Eenadu district edition, Warangal district, on 20.10.2005. It is further alleged that so far as the licence fees of Rs.5,58,000/-, payable for the period from 1.7.2005 to 31.12.2005 is concerned, whereas the petitioner is required to pay the said amount by 1.6.2005, he failed to pay the same before the time fixed, but the same was paid in three instalments, as per his own convenience, and on account of the delayed payment, the petitioner is liable to pay penal charges of Rs.11,828/-. Thus, it was contended that having regard to the above facts and circumstances, and in view of the complaints received against the petitioner, the contract was rightly terminated.

I have heard the learned counsel for both the parties and perused the material on record.

The material placed on record shows that the petitioner paid the licence fee in three instalments, as mentioned above, on 30.6.2005, 2.8.2005 and 15.8.2005. It is true that as per the terms and conditions of the agreement, the licence fees of Rs.5,58,000/- was required to be paid by 1.6.2005 and, therefore, for the delayed payment, it is always open to the respondents to take necessary action as per the terms of the agreement. As a matter of fact, the petitioner was already asked to pay penal charges.

However, the impugned proceedings of termination were issued on an allegation that the petitioner was collecting higher charges. The petitioner was never issued any notice calling upon to explain the said allegation. For the first time, the allegation was mentioned in the proceedings dated 27.10.2005 while terminating the contract. Such unilateral action on the face of it is in violation of the principles of natural justice and illegal. Hence, the impugned order of termination is set aside. However, liberty is granted to the respondents to initiate fresh proceedings following due process of law in case necessity thereof arises.

The writ petition is accordingly, disposed of. No costs.

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(G. ROHINI, J.)

22nd June, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24325 OF 2005

22nd June, 2006.

Between:

B. Mallareddy. .. Petitioner.

And

South Central Railway, represented by its
General Manager, Fail Nilayam, Secunderabad
and another. .. Respondents.